

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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WASHINGTON, DC 20554

In the Matter of)
Toll Free Service Access Codes) CC Docket No 95-155

COMMENTS OF NIMA INTERNATIONAL **DOCKET FILE COPY ORIGINAL**

NIMA International ("NIMA") submits these comments in response to the Commission's October 4, 1995, notice of proposed rulemaking seeking comment on proposals to promote the fair and efficient reservation and distribution of toll free numbers.

NIMA's Interest in this Proceeding

NIMA's membership encompasses a broad array of companies that use toll free telephone numbers to market, promote and sell consumer products through infomercials, (i.e., program-length television commercials), home shopping programming, short-form direct response television advertisements, and other media. This form of electronic marketing, which generates over four billion dollars in sales annually, enables consumers to learn how products or services can be used or applied, and permits consumers to place their orders conveniently and inexpensively by calling a toll free telephone number.

NIMA's membership of more than 470 companies encompasses producers, advertising agencies, scriptwriters and performers who create and appear in infomercials and direct-response advertising (and their agents and representatives), and distributors of

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such advertising. It also includes television stations, cable television networks, telemarketing service bureaus, fulfillment houses, direct mail service agencies and others who support this form of marketing.

Infomercial marketers use toll free numbers somewhat differently than do other marketers (e.g., airlines, banks, catalog sellers, or other companies). A more traditional marketer may invest a considerable amount of money to advertise or otherwise promote a "vanity" or other easy-to-remember telephone number, which consequently generates a high volume of calls for many years. But infomercial and other direct-response sellers use many different toll free numbers at the same time, rarely using any single number for very long.

A successful infomercial may air on hundreds of different television stations and cable networks or systems. To track the number of orders generated by airings of the infomercial on different stations, the typical infomercial marketer puts a different toll free number on each videotaped infomercial that it traffics. That enables the telemarketing service bureau (which takes consumers' calls in response to the infomercial) to match up any order with the media buy that generated it -- a process known as "media sourcing" -- which allows the marketer to determine with a high degree of accuracy whether purchasing advertising time on a particular station generated enough revenue to be profitable.

If it placed the same toll free number on each copy of the infomercial that it trafficked, the marketer would be able to determine if the advertising campaign as a whole was profitable, but would have no way of knowing whether any particular media

buy was profitable. The telemarketing service bureau could ask each caller what station he or she was watching when the advertisement appeared, but media sourcing that relies on customers to identify the broadcast station or cable network they were watching is far from accurate, particularly for customers who are cable TV or DBS subscribers.

Many infomercials do not generate enough orders to be profitable, and consequently have very short lives. But even successful infomercials do not generate profits every time and place they are aired. Without a sufficient supply of different 800 numbers to assign to each media outlet it uses, an infomercial company could not obtain reliable media sourcing, so it would have no accurate means of distinguishing profitable from unprofitable media purchases. (It would be in the same position as a fast-food restaurant chain that had aggregate sales and cost data for its business as a whole, but had no data on any single location's sales and cost numbers. It would know whether its operations were profitable generally, but would have no idea which of its individual locations were profitable and which were losing money.) A reliable and sufficient supply of toll free numbers is, therefore, absolutely crucial to those who use infomercials and other direct-response television advertising to sell their products.

**NIMA'S Comments on Proposals Relating
to the Efficient Use of Toll Free Numbers**

NIMA supports the Commission's proposals to ensure that toll free numbers are available for subscribers who want and need them. We agree that responsible

organizations and 800 service providers should have an affirmative request from a subscriber before assigning a toll free number to such a subscriber.

NIMA opposes any requirement that a deposit accompany the reservation of any toll free number. Such a requirement would increase costs to those firms who utilize toll free numbers, particularly those firms who utilize many different numbers (like direct-response marketers). Even if the Commission requires that deposits be paid by RespOrgs or service providers rather than the ultimate consumers of toll free numbers, those costs undoubtedly would be passed on to the ultimate consumers.

While proposals to reduce time lags may be justified as emergency conservation measures when available toll free numbers are in short supply, such proposals will impose costs that are likely to outweigh the benefits of such reductions in non-emergency situations. Obviously, any proposal to shorten the time lag before a disconnected number is made available for reassignment will result in some increase in misdialing and expense to the new subscriber. And reducing the maximum time period that a number may be suspended from working status from 12 months to four months or any other lesser period will harm marketers whose products are seasonal.

In addition, we question the wisdom of reducing the maximum amount of time that a toll free number can remain in reserved status from the current 60 days. NIMA members primarily use electronic media to market their products, but they also use newspaper and magazine ads, direct mail, and other print media. Advance publication deadlines and other factors make it necessary for print advertisers and direct mail marketers to know what toll free number to put in a print ad or direct mail piece well in

advance of the ad's publication or mailing. (As explained above, NIMA members assign a different toll free number to each television station or cable network on which they advertise in order to obtain accurate media sourcing data. The same is often true of print ads, which may appear in many different publications, and direct mail pieces, which may be mailed at different times to different customer lists.) Reducing the length of time that a number can be held in reserved status will shorten the amount of time that an advertiser has to prepare and distribute its advertising, and the consequent increase in its costs likely will be passed on to its consumers.

Finally, NIMA supports Commission efforts to encourage the use of personal identification numbers ("PINs") by personal or other low-volume users of toll free service. As the Commission recognizes, PIN numbers are incompatible with most business usage of toll free numbers (especially their use by television advertisers).

NIMA'S Comments on Proposals Relating to the Mechanics of Opening New Toll Free Codes

NIMA agrees that the Commission's primary goal in this proceeding should be to prevent the supply of available toll free numbers from becoming depleted before numbers with the successor code are available for use. It is critical that future shortages like the one that developed earlier this year be avoided. Any implementation "trigger" must operate early enough to ensure timely deployment of new toll free codes. (A 50% trigger does not seem unreasonably low to us.) If the procedures for deploying new toll free codes ensure that there will always be a sufficient supply of toll free numbers, incentives

for firms to "warehouse" or hoard numbers will be reduced or eliminated, and the Commission may find it unnecessary to promulgate command-and-control regulations dealing with those issues.

NIMA'S Comments on Proposals to Reduce "Warehousing" of Toll Free Numbers

As noted above, if the Commission accelerates deployment of new toll free codes and otherwise takes steps to ensure that there will always be a sufficient supply of toll free numbers, firms will have little or no incentive to "warehouse" numbers.

Regulations designed to discourage warehousing may have unintended consequences. Infomercial and other direct-response marketers depend on telemarketing service bureaus to have a large enough supply of available toll free numbers to respond to the marketers' needs for such numbers very quickly. When a new infomercial turns out to be a hit, an infomercial marketer may need to obtain a large number of toll free numbers on short notice so that it can distribute a large number of videotapes (each with a unique toll free number) to individual broadcast stations and cable networks.

Once orders begin to fall off, the infomercial marketer will gradually withdraw the infomercial from the airwaves and release the toll free numbers it used in that infomercial back to the telemarketing service bureau for "aging" and eventual reassignment to new infomercials. Service bureaus need to maintain an inventory of spare numbers to help smooth out short-run imbalances between the demand for new numbers and the supply of old numbers available for reassignment.

Arbitrary caps on the number of toll free numbers that can be reserved could result in short-term shortages or delays in the availability of toll free numbers. What appears to be warehousing could be a bona fide attempt to anticipate and meet the legitimate business needs of toll free number users. We urge the Commission, therefore, to consider the effects of anti-warehousing measures very carefully before promulgating them.

NIMA's Comments on Proposals

Relating to "Vanity" Numbers

As explained above, the need for accurate media sourcing requires an infomercial marketer to use many different toll free numbers to take orders for a single infomercial product. Infomercial marketers, therefore, may rely on "vanity" numbers less than do more traditional advertisers. But NIMA members do use vanity numbers for a variety of purposes.

NIMA supports the Commission's proposal to give a right of first refusal to holders of all 800 numbers, including vanity numbers. Such a right would benefit both the advertisers who use such numbers and their customers (for whom a vanity or other easy-to-remember number is a convenient way to reach an advertiser). As noted above, only a small percentage of the toll free numbers used by NIMA members are vanity numbers. Most 800 numbers are not particularly desirable, and the right of first refusal over such numbers is unlikely to be exercised. We believe, therefore, that giving vanity

number holders a right of first refusal will not contribute significantly to the depletion of new toll free codes.

Incumbent holders of 800 numbers should not be required to pay any special fee to exercise their rights of first refusal over the same numbers in other toll free codes. The usual costs associated with reserving and using an additional toll free number will help to ensure that incumbents exercise the right of first refusal only when there is a sound business reason for doing so.

We understand that the Direct Marketing Association ("DMA") has proposed that vanity number holders be given an alternative to exercising the right of first refusal. If the DMA's proposal were adopted, the incumbent 800 vanity number holder could release that number in the 888 code as long as the 888 user agreed not to advertise or otherwise exploit the word or phrase spelled out by the vanity number. Allowing this conditional release of the number would enable the 800 vanity number holder to protect its investment in the vanity number without requiring it to exercise its right of first refusal and pay for additional numbers in the 888 and subsequent toll free codes. It also would help to minimize consumer confusion and to preserve the supply of available numbers in new toll free codes. For all these reasons, we support the DMA's proposal.

NIMA believes that a right of first refusal is a far superior means of preventing competitive harm and consumer confusion than using standard industrial classifications ("SICs") to identify competitive applicants for toll free numbers. First, it is not clear that the use of such codes would identify true or potential competitors with sufficient accuracy. Even if the SICs were comprehensive and precise in theory, misclassifications

(whether accidental or intentional) could be difficult, if not impossible, to prevent. So the use of SICs is likely to result in both “false positives” (i.e., identification of a noncompetitive firm as a competitor) and “false negatives” (i.e., failure to identify an actual or potential competitor).

Obviously, the right of first refusal will be of little value unless incumbent 800 number holders are given adequate notice of that right and the consequences of exercise or failure to exercise that right. We believe that a notice should be sent to all 800 number holders before the deployment of the 888 code. Number holders should be given adequate time (perhaps 30 days) to respond to that notice before the 888 equivalents of their 800 numbers are assigned to others. If no response is received within that time, we believe a second notice should be sent. If the 800 number holder fails to respond to the second notice, it should be presumed that it does not want to exercise its right of first refusal (or to condition its release as described in the DMA proposal).

NIMA'S Comments Regarding Public

Awareness of New Toll Free Codes

There is little doubt that it will take some time for consumers to become accustomed to the fact that there is more than one toll free code. NIMA urges the Commission to do what it can to educate consumers directly about the new 888 toll free code. Because so many of the businesses who provide or use toll free telephone service have an incentive to get the word out to consumers, we believe that voluntary industry efforts to educate consumers about the new 888 numbers are likely to be extensive. But

we hope that the Commission will continue to monitor such efforts, serve as a clearinghouse for information about particular publicity initiatives, and otherwise do what it can to encourage and facilitate consumer education. NIMA will continue to encourage its members to assist in this effort by telling their customers about the new 888 code.

Conclusion

NIMA supports the Commission's efforts to promote the fair and efficient use of toll free numbers, particularly its efforts to assure that future transitions to new toll free codes will proceed smoothly. But we question the wisdom of proposals to shorten the length of time that toll free numbers can remain in reserved or suspended status. Such proposals may be justified as emergency measures, but the costs they impose on users of toll free numbers seem likely to outweigh their benefits in non-emergency situations. In addition, we urge the Commission to take steps to ensure that holders of numbers in the 800 toll free code be given a right of first refusal over the same number in the 888 and other toll free codes.

Respectfully submitted,



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